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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 573

JOHN L. LEWIS, HENRY G. SCHMIDT, and JOSEPHINE ROCHE, as Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950, *Petitioners*,

v.

F. ARNOLD LOWRY, Individually, and Trading as Lowry Coal Company

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, John L. Lewis, Henry G. Schmidt, and Josephine Roche, as Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950,[1] pray that a writ of certiorari issue to review

[1] Herein called "Fund". "Petitioners" are also called "Trustees" herein.

the judgment of the United States Court of Appeals for the Fourth Circuit[2] entered September 16, 1961, in Case No. 8298, styled John L. Lewis, Henry G. Schmidt, and Josephine Roche, as Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950, Appellees, v. F. Arnold Lowry, Individually, and Trading as Lowry Coal Company, Appellant,[3] wherein the Fourth Circuit, Chief Judge Sobeloff dissenting, reversed with costs the judgment entered by the United States District Court for the Western District of Virginia, at Abingdon,[4] in Petitioners' favor and against Lowry for $49,531.40 (and interest and costs) and remanded the cause "for further proceedings consistent with the opinion of the" Fourth Circuit (R. 21; A. 13a).[5]

A certified Appendix record in said case, together with the proceedings in the Fourth Circuit, is furnished herewith, in accordance with the Rules of this Court.

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[2] The United States Court of Appeals for the Fourth Circuit is herein called either the "Fourth Circuit" or "Court of Appeals".

[3] Herein called "Lowry".

[4] Herein the United States District Court for the Western District of Virginia, at Abingdon, is called either "district court" or "trial court".

[5] The abbreviation "R." refers to the printed certified record filed in this Court under its Rule 21; the abbreviation "A." refers to the Appendix to the instant Petition; the abbreviation "D.A." refers to the Appendix to Lowry's brief in the Fourth Circuit and designated as 1a in the certified record; and the abbreviation "P.A." refers to the Appendix to Trustees' brief in the Fourth Circuit and designated as 2a in the certified record.

OPINION BELOW

The district court's opinion appears in the certified Appendix record (D.A. 33-8) and is reported in 190 F. Supp. 490. The Fourth Circuit's opinion appears in Appendix A hereto at page 1a, et seq.; and the dissenting opinion of Chief Justice Sobeloff appears in Appendix A hereto at page 6a et seq. Both appear in the certified Appendix record (R. 5-19) and are reported in F. 2d , and in 48 LRRM 3062.

JURISDICTION

The Fourth Circuit's judgment reversing the trial court's judgment and remanding the case for further proceedings, as aforesaid, was entered September 16, 1961 (A. 13a).

This Court's jurisdiction is invoked under 28 USCA, Sections 1254(1) and 2101(e).

BASIS FOR FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

The basis for federal jurisdiction in the United States District Court of the complaint was diversity of citizenship between the plaintiffs and the defendant and the amount involved.

QUESTION PRESENTED

In an action by Trustees of an irrevocable trust contained in an industry-wide collective bargaining contract between bituminous coal operators and United Mine Workers of America, in writing in conformity with Section 8(d) of the Labor Management Relations Act, 1947, and which trust was created pursuant to that Act's Section 302(c) for the benefit of all em-

ployees of all employer signatories to the agreement, brought to recover unpaid moneys due the trust under said trust provisions against a single operator signatory, (a) does national labor policy as set forth in said statutes preclude proof by a signatory that there was an oral secret agreement between himself and a union representative that such written collective bargaining agreement was a "sham" or pretensive one and that the real agreement was the signatory need pay, not according to the tenor of the written instrument's obligations, but only what he could; and (b) does such national labor policy foreclose such a defense as against the Trustees so as to require the signatory to pay in accordance with his written agreement, even though such oral secret agreement may be shown?

STATUTES INVOLVED

The pertinent statutory provisions involved are Sections 8(d) and 302(c)(5) of the Labor Management Relations Act, 1947 (called "Act") [29 USCA 158(d) and 186(c)(5)], and 28 USCA, Rule 56, Federal Rules of Civil Procedure, which are set forth in Appendix B hereto (page 14a, et seq.).

STATEMENT OF THE CASE

A. The District Court Proceedings, Opinion and Judgment

Pursuant to the Act's Section 302(c), the National Bituminous Coal Wage Agreement of 1950 created the "United Mine Workers of America Welfare and Retirement Fund of 1950" as an irrevocable trust for employees of signatory coal operators, their families and dependents (P.A. 12). By its terms "each operator signatory" covenanted to pay into the Fund thirty cents "on each ton of coal produced for use or

for sale" (P.A. 12), which was increased to forty cents by an amendment effective October 1, 1952.[6]

Lowry, operating mines in Harlan County, Kentucky, became a signatory to this industry-wide Agreement with United Mine Workers of America (called "UMW") and executed the 1952, 1955 and 1956 Agreements (P.A. 2-4). Thereunder, from May 1, 1955 to August 31, 1958, he produced 131,998.5 tons of coal for use or for sale (P.A. 4). As the three Agreements required (P.A. 14), Lowry remitted employee union dues and assessments to UMW, asserting he himself paid such dues but admitting that the assessments were deducted from employees' wages (D.A. 23-5). Lowry's employees applied to the Fund, and the Fund approved their applications, for hospital and medical benefits (P.A. 27-8) and such benefits were actually provided by the Fund to most of Lowry's employees "as a result of their eligibility" as Lowry employees (P.A. 28-9). On one occasion, when Fund requested Lowry furnish information concerning an employee's eligibility, Lowry supplied the information requisite to the employee's receiving Fund benefits (P.A. 30-1).

Though admittedly producing 131,998.5 tons, Lowry paid royalty payments required by the agreements upon only 4,610 tons. Such payments were included in twenty-five monthly payments which Lowry transmitted to the Fund, each accompanied by a Check

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[6] The National Bituminous Coal Wage Agreement of 1950 is called "1950 Agreement" (P.A. 11); as amended effective October 1, 1952, it is called the "1952 Agreement" (P.A. 7); as amended effective September 1, 1955, it is called "1955 Agreement" (P.A. 8); and as amended effective October 1, 1956, it is called "1956 Agreement" (P.A. 10).